

ITEM ____
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Photographic Record of Evidence, 04-PGA-09 (04-RL-9807-09)

EXECUTIVE SUMMARY

On October 26, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that the *Photographic Record of Evidence* program (as enacted by Stats. 1997, ch. 828, Sen. Bill No. 376 and Cal. Code of Regulations, Tit. 5, §§ 850 – 870) imposes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and costs mandated by the state pursuant to Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Statutes 2004, chapter 316, section 3, subdivision (d), (Assem. Bill No. 2851) directed the Commission to reconsider the prior final decision for the *Photographic Record of Evidence* program.

Section three of Assembly Bill 2851 states the following:

Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

. . . (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990) . .

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for the *Photographic Record of Evidence* program be amended once the Commission completes reconsideration of the program¹.

On July 28, 2005, the Commission found, effective July 1, 2005, that Penal Code section 1417.3, subdivision (b) requires, for exhibits in criminal trials that are toxic by their nature that pose a health hazard to humans, providing: (1) a photographic record of evidence; (2) a written chemical analysis certified by a competent authority; and (3) for cities alone, storage of toxic exhibits. The Commission found that these activities impose a reimbursable state mandate on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556. The Commission found that all other activities are no longer required.

Discussion

Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Substantive changes were made to the following sections of the parameters and guidelines.

Section II. Eligible Claimants

This section was amended to clarify that activity IV. D (storage of exhibits) only applies to cities, and the section was amended to clarify that only counties, cities, and a city and county that put on evidence in criminal trials are eligible claimants in conformance with the Statement of Decision.

Section III. Period of Reimbursement

Staff modified this section to include a new reimbursement period beginning July 1, 2005.

Section IV. Reimbursable Activities

Staff made the following changes to this section:

1. Deleted the activity of developing internal policies and manuals to implement the activities because this activity should have already been completed.
2. Clarified that activities are only reimbursable in criminal trials for exhibits toxic by their nature that pose a health hazard to humans.
3. Deleted the language that required claimants to provide supporting documentation showing that the court deemed exhibits a security, safety or storage problem because this criteria no longer exists in the Statement of Decision.
4. Clarified that only cities are eligible for reimbursement for storing these toxic exhibits.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines for the *Photographic Record of Evidence* program beginning on page 3.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ Exhibit A.